S.B.C.W.P. NO. 5190/93
(Vijay Kumar & Ors. Vs. Municipal Council, Sriganganagar)
S.B.C.W.P. No. 5264/93
(Kamal Kumar Vs. Municipal Council, Sriganganagar)

Date of order: 13.10.2006

HON'BLE MR. RAJESH BALIA,J.

Mr. Sudheer Sharma, for the petitioner.
Mr. Yaswant Mehta, for the respondents.

The dispute in these two writ petitions relates to claim of the petitioners to land auctioned by Municipal Council, Sriganganagar in 1976-77 where petitioners were the highest bidders for the plot in question and the price of which was paid by them. The auction was for setting up shops in New Sabji Mandi Area, Old Abadi, Sriganganagar.

Since the date of auction, petitioners had not been able to secure possession of the land because according to them when they contacted to get the possession they found that the land auctioned to them is not available on the site but instead there existed a well and, therefore, they have been claiming the allotment of shop which in the meantime came to be carved out near the Municipal Maternity Hospital, Sriganganagar. It was the case of the petitioners that after about 10 years of auction, by resolution no.6 dated 22/12/1992 the Municipal Council decided to lease out

alternative place to the respective petitioners near Maternity Hospital, Sriganganagar. However, instead of delivering the said land to the respective petitioners, the same was put to auction. This led to filing of writ petitions seeking mandamus that Municipal Council be directed to get the lease deed executed in favour of respective petitioners in pursuance of resolution dated 22.12.1992 in respect of shops situated near Maternity Hospital, Sriganganagar.

When the matter was heard on 8.9.2006, by detailed order the Court noticed the fabric of the dispute and considering the allegations and counter allegations made in the writ petition passed the following order in terms of statement contained in reply submitted by the respondents:-

> " With these factual matrix about the dispute, we notice that the respondent in its return has categorically stated that land auctioned to the respective petitioners in the year 1976 is a flat land, with even no pit on the site and if the petitioner wants to raise any construction over the land, he may do so. However, he may have to clear the land by removal of wild growth or rubbish or Debris which may be lying on the site. With this factual foundation, the Municipal Council in its return stated that the answering respondent is prepared to deliver physical possession of the land auctioned to the petitioners in the year 1976 to the petitioner even now.
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> Apparently, if the site in question where the shops were auctioned in 1976 were not covered by the well and were available as a flat land to deliver to the petitioners, the petitioners would have no right to secure alternative land of much higher value in

> 1993 and the same can still be delivered to the petitioners than the land at new Sabji Mandi.
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> Learned counsel for the Municipal Council has reiterated the statement made in the return. In these circumstances, it would be appropriate that before the court consider the question of petitioners claiming allotment of alternate land, the respondents be given an opportunity to deliver the vacant possession of the land originally auctioned to the petitioner in 1976. it must do so by the next date so that this writ petition can come to an end. In case the site auctioned in 1976 is available for delivering the possession to the petitioner the petitioner would not have to pursue this writ petition."

With these directions, the matter was ordered to be listed for reporting the delivery or non-delivery of possession of vacant site to the petitioners as ordered.

However, the report has been made by learned counsel for the respondents today, on the basis of letter dated 18.09.2006 received by learned counsel for Municipal Council, Sriganganagar that the shops No. 59 & 60 for which the petitioners of the two writ petitions have offered their bids in New Sabji mandi, Mandi Area, Old Abadi, Sriganganagar is not available for allotment because the same falls within the premises occupied by the wall constructed by Shri Hazari Lal Maheshwari, Bikaner. This statement justifies the stand taken by the petitioner since beginning.

The letter, issued by the Municipal Council, Sriganganagar to its counsel conclusively, supports the case set up by the petitioners that the shops in question which were auctioned as existing on available site in 1976—77 were in fact non existent and auction took place on proposal made by the Municipal Council which was contrary to the factual position existing at site. It is because of this situation several requests by the petitioners for securing the possession could not be fulfilled. It is in view of the aforesaid situation, the decision taken by the Municipal Council vide resolution No.6 dated 22.12.92 which was in consonance with equities to free the Municipal Council of wrangle created by its own mistake.

However, instead of acting upon that resolution, the Municipal Council decided to put all the seven shops situated near Maternity Hospital, Sriganganagar for public auction which led to filing of the writ petition.

After the interim order was issued staying the auction proceedings of the shops situated near Maternity Hospital, Sriganganagar, as per the respondents, all the seven shops were cumulatively put to auction with minimum price of Rs. 14 lacs cumulatively or Rs 2 lacs per shop.

It further appears that the seven shops were put to auction with minimum bid price of Rs. 2 lacs per shop before the interim order could be communicated to the respondents and three shops had already been auctioned and remaining four shops could not be auctioned due to interim order and they are still lying vacant.

The cancellation of the resolution for alleged alternative land to be allotted to the petitioners near Maternity Hospital, Sriganganagar has been made without notice to the present appellant for whose benefit, the resolution has been made and that too after interim order was passed by this court.

Be that as it may the petitioners who are victims of the mistake committed by the Municipal Council cannot be penalized for that reason. In the circumstances, it will be just and appropriate, if the Municipal Council, is directed to allot the petitioners, in the two petitions respectively, one shop each out of the available shops near Maternity Hospital, Sriganganagar, in lieu of the shops purportedly auctioned to the petitioners. In order to see that neither the petitioners secure fortuitous gain nor Municipality suffers on account of

such delayed action, we further direct that if the market price of shops to be allotted to the petitioners is higher than the market price of concerned shops at New Sabji Mandi as on the date of allotment such difference in price shall be payable by the petitioners to respondent Municipal Council. In case the petitioners are not desirous of accepting the offer, the amount deposited with the respondents shall be returned to the respective petitioners with interest at the rate of 9 % from the date of deposit until the date of payment. The offer shall be made to the petitioners by the respondents by requiring the petitioners to deposit the amount, if any required, within one month from the receipt of notice. Such offer shall be made within four weeks from the date of certified copy of this order is placed before Chief Executive Officer of the Municipal Council by the petitioners. In case Chief Executive Officer is not available w.e.f. the date such order is placed before other competent officer discharging the functions of Chief Executive Officer of the Municipal Council, Sriganganagar.

Accordingly, these petitions are disposed of.

No order as to costs.

(RAJESH BALIA),J.

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